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DE RUEHDG #1169/01 2751849
ZNY CCCCC ZZH
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FM AMEMBASSY SANTO DOMINGO
TO RUEHC/SECSTATE WASHDC PRIORITY 3524
INFO RUEHZA/WHA CENTRAL AMERICAN COLLECTIVE
RUEHWN/AMEMBASSY BRIDGETOWN 2277
RUEHKG/AMEMBASSY KINGSTON 2978
RUEHBH/AMEMBASSY NASSAU 1111
RUEHPU/AMEMBASSY PORT AU PRINCE 5050
RUEHSP/AMEMBASSY PORT OF SPAIN 2013
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C O N F I D E N T I A L SANTO DOMINGO 001169

SIPDIS

PLEASE PASS TO USTR FOR DAVID OLIVER

E.O. 12958: DECL: 10/01/2019
TAGS: ENRG EINV PREL DR VE
SUBJECT: PROPOSED SALE OF GOVERNMENT-OWNED OIL REFINERY TO
PDVSA

Classified By: Political/Economic Counselor Alexander Margulies. Reaso
n: 1.4(b/d).

SUMMARY

¶1. (C) The Government of the Dominican Republic (GoDR) is proposing to sell 49 percent of its principal petroleum refinery, REFIDOMSA, to Venezuela's state-owned oil company, PdVSA. The American Chamber of Commerce (AMCHAM) has expressed its concern to the Embassy that this transaction would provide the Venezuelan Government with undue control over the local economy and thus over the Dominican Government. The AMCHAM's legal committee has produced an analysis asserting that the sale would violate Dominican law and DR-CAFTA, but the legal reasoning appears weak and the chief lawyer involved has political ties to the opposition PRD party that call his objectivity into question. END SUMMARY

THE REFIDOMSA DEAL

¶2. (U) In June 2009, the Government of the Dominican Republic (GoDR) announced plans to sell a 49 percent stake in its national refinery, Refineria Dominicana de Petroleo S.A. (REFIDOMSA), to Petroleos de Venezuela S.A. (PdVSA), the state-owned oil company of Venezuela. The proposed sale, valued at USD 130 million, is likely to be paid by crediting existing GoDR debt to PdVSA/PetroCaribe, and comes several months after the GoDR purchased Royal Dutch Shell's stake in the refinery for USD 110 million. The Dominican Republic currently receives 27 percent of its petroleum imports from Venezuela, and is expecting to receive USD 240 million in financing from Venezuela's PetroCaribe program this year.

THE LEGAL OBJECTIONS

¶3. (C) AMCHAM Board members have expressed to Emboffs their concern that the REFIDOMSA deal will give Venezuela's Hugo Chavez control over the Dominican Republic's oil supplies and, thus, undue influence over the Dominican Government and economy. Consequently, the AMCHAM Board tasked its Legal Committee with examining the transaction to see if there are legal grounds for objection. That effort was headed by Hugo Rivera Fernandez, a member of the opposition Revolutionary Democratic Party (PRD) who was formerly Sub-Secretary of

Industry and Commerce and chief DR-CAFTA negotiator during the 2000-2004 PRD Government of Hipolito Mejia.

¶4. (SBU) Rivera met with PolEcon Counselor and Econoffs on 09/11 to present his legal analysis that the REFIDOMSA sale violates Dominican law and DR-CAFTA. (We have forwarded his supporting documents to WHA/CAR and USTR.) Rivera based his arguments on a 1956 Dominican law (4532-56) that explicitly forbids any foreign government from obtaining the right to explore, exploit, or benefit from petroleum and/or other hydrocarbons found in the Dominican Republic (DR). The law also prohibits foreign governments from becoming partners, associates, or stockholders of any company that enjoys such a right. Since PdVSA is a government-owned company, Rivera concludes, this law prohibits it from having an ownership interest in REFIDOMSA. (COMMENT: Rivera's interpretation of Law 4532-56 is not convincing, as the legislation itself only refers to hydrocarbon deposits within the DR; there is nothing in its text that would indicate it should be applied to hydrocarbons imported into the country for refining or other use. END COMMENT.)

¶5. (U) The claim that the REFIDOMSA sale also violates DR-CAFTA is based upon Law 4532-56's inclusion in Annex 1 ("Schedule of the Dominican Republic") of the Agreement. This, Rivera claims, prohibits DR-CAFTA Governments from purchasing REFIDOMSA. The result, he argues, is that the GoDR is extending to Venezuela, through state-owned PdVSA, a right that not only violates Law 4532-56, but also violates DR-CAFTA's provisions on notification of other State Parties and on most-favored-nation treatment for State Parties. Specifically, Rivera relies on two DR-CAFTA Articles for

support. First, he notes that Article 18.3 holds that "each (State) Party shall notify any other (State) Party with an interest in the matter of any proposed or actual measure that the (State) Party considers might materially affect the operation of (the Agreement or the other State Party's interests)." Rivera alleges that the failure of the GoDR to put the REFIDOMSA sale out for bidding violates this provision. Second, he asserts that the deal also violates Article 10.4, which establishes that investors from another State Party receive no less favorable treatment than that accorded to other State Parties and non-State Parties with respect to investments in its territory. Since DR-CAFTA State Parties were not invited to bid on the project, Rivera concludes that the sale to PdVSA affords Venezuela more favorable treatment than that enjoyed by DR-CAFTA State Parties.

POLITICS, POLITICS

¶6. (C) Rivera urged the U.S. Government to raise with the GoDR these arguments that the REFIDOMSA sale violates DR-CAFTA. PolEcon Counselor replied that we would review Rivera's legal brief and supporting documents, but noted that we were not aware of any interest by U.S. firms in bidding on REFIDOMSA. Rivera acknowledged that this was the case, commenting that a consortium of local investors, led by the Vicini Group, had expressed interest in purchasing the refinery, but had been warned off by the Fernandez Government. He added that his own PRD party was concerned over the GoDR's growing ties with the Chavez regime. PolEcon Counselor then asked Rivera why the PRD was not objecting to the sale? Rivera replied that PRD leader Miguel Vargas Maldonado is hesitant to anger Chavez out of concern that the latter would respond by funneling money to the ruling Dominican Liberation Party's (PLD) campaigns for the 2010 congressional/municipal elections and the 2012 presidential contest.

THE GOVERNMENT'S RESPONSE

¶7. (U) In response to Rivera's report and to his subsequent

media appearances and press articles objecting to the REFIDOMSA deal, the Secretariat for Industry and Commerce released a statement asserting that Law 4532-56 empowered the GoDR to chose between possible partners, regardless of nationality, and that its inclusion in DR-CAFTA meant that the selection of a non-State Party partner would not violate the Agreement.

COMMENT

¶8. (C) The sale of a large minority stake in REFIDOMSA to PdVSA is worrying for political and economic reasons. Yet, out of fear of upsetting the GoDR or Venezuela's Chavez, neither the business sector nor the major opposition party are prepared to make this an issue of public debate. Instead they are relying on a weak legal case and the hope that the U.S. Government will somehow use its influence to scuttle the deal.

¶9. (C) In the near term, the REFIDOMSA transaction, should it proceed, is unlikely to have much of an impact, but its long-term consequences remain cause for concern. Venezuela already plays a significant role in the Dominican petroleum sector and the suspicion is that its purchase of 49 percent of REFIDOMSA will be followed before too long by the exchange of the remaining 51 percent in return for some of the GoDR's growing debts to PdVSA/PetroCaribe, and then the extension of PdVSA activity into the retail sector. In this respect, representatives of a major U.S. oil company operating here recently told the Charge and Emboffs that their chief worry is that Venezuela will use its growing clout to skew the retail playing field in its favor. END COMMENT.
LAMBERT